



## Senate

General Assembly

**File No. 252**

February Session, 2008

Substitute Senate Bill No. 157

*Senate, March 31, 2008*

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING AUTOMATIC ENROLLMENT IN RETIREMENT PLANS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-71e of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 No employer may withhold or divert any portion of an employee's  
4 wages unless (1) the employer is required or empowered to do so by  
5 state or federal law, or (2) the employer has written authorization from  
6 the employee for deductions on a form approved by the commissioner,  
7 or (3) the deductions are authorized by the employee, in writing, for  
8 medical, surgical or hospital care or service, without financial benefit  
9 to the employer and recorded in the employer's wage record book, or  
10 (4) the deductions are for contributions attributable to automatic  
11 enrollment, as defined in section 2 of this act, in a retirement plan  
12 described in Section 401(k), 403(b), 408, 408A or 457 of the Internal  
13 Revenue Code of 1986, or any subsequent corresponding internal  
14 revenue code of the United States, as from time to time amended,

15 established by the employer.

16       Sec. 2. (NEW) (*Effective October 1, 2008*) (a) As used in this section:  
17       (1) "Automatic enrollment" means a plan provision in an employee  
18       retirement plan described in Section 401(k) or 403(b) of the Internal  
19       Revenue Code of 1986, or any subsequent corresponding internal  
20       revenue code of the United States, as from time to time amended, or a  
21       governmental deferred compensation plan described in Section 457 of  
22       said Internal Revenue Code, or a payroll deduction Individual  
23       Retirement Account plan described in Section 408 or 408A of said  
24       Internal Revenue Code under which an employee is treated as having  
25       elected to have the employer make a specified contribution to the plan  
26       equal to a percentage of compensation specified in the plan until such  
27       employee affirmatively elects to not have such contribution made or  
28       elects to make a contribution in another amount; and (2) "automatic  
29       contribution arrangement" means an arrangement under an automatic  
30       enrollment plan under which, in the absence of an investment election  
31       by the participating employee, contributions made under such plan are  
32       invested in accordance with regulations prescribed by the United  
33       States Secretary of Labor under Section 404(c)(5) of the Employee  
34       Retirement Income Security Act of 1974, as amended from time to  
35       time.

36       (b) Any employer who provides automatic enrollment shall be  
37       relieved of liability for the investment decisions made by the employer  
38       on behalf of any participating employee under an automatic  
39       contribution arrangement, provided:

40       (1) The plan allows the participating employee at least quarterly  
41       opportunities to select investments for the employee's contributions  
42       between investment alternatives available under the plan;

43       (2) The employee is given notice of the investment decisions that  
44       will be made in the absence of the employee's direction, a description  
45       of all the investment alternatives available under the plan and a brief  
46       description of procedures available for the employee to change  
47       investments; and

48 (3) The employee is given at least annual notice of the actual  
 49 investments made on behalf of the employee under such automatic  
 50 contribution arrangement.

51 (c) Nothing in this section shall modify any existing responsibility of  
 52 employers or other plan officials for the selection of investment funds  
 53 for participating employees.

54 (d) The relief from liability of the employer under this section shall  
 55 extend to any other plan official who actually makes the investment  
 56 decisions on behalf of participating employees under an automatic  
 57 contribution arrangement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	31-71e
Sec. 2	October 1, 2008	New section

**Statement of Legislative Commissioners:**

In subsection (b) of section 2, language specifying the plans that was duplicative of language in the definition of "automatic enrollment" was removed for clarity.

**AGE**      *Joint Favorable C/R*

INS

**INS**      *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill allows employers to withhold or divert any portion of an employee's wages if such deductions are for contributions attributable to automatic enrollment in a retirement plan and has no fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****SB 157****AN ACT CONCERNING AUTOMATIC ENROLLMENT IN RETIREMENT PLANS.****SUMMARY:**

This bill adds a new ground on which an employer may withhold a portion of an employee's wages: the employer's investment of the deductions in an automatic enrollment retirement plan. Current law allows an employer to withhold a portion of an employee's wages only if required to do so by state or federal law or if the employee gives written permission.

Under the bill, an employer may deduct a certain percentage of an employee's salary to invest in an automatic retirement plan unless the employee opts out of the plan or chooses to make contributions in a different amount. If an employee does not provide any investment direction, the bill requires contributions to be invested according to federal Department of Labor regulations under Section 404 (c)(5) of the 1974 Employee Retirement Income Security Act. An employer or other plan official who makes investment decisions on behalf of a participating employee is not liable for such decisions if the following requirements are met:

1. the participating employee is allowed to select investments available under the plan at least quarterly;
2. the employee is notified of all investment alternatives available under the plan, procedures for changing investments, and how contributions will be invested if the employee does not provide any direction; and

3. the employee is notified at least annually of the actual investments made on the employee's behalf.

EFFECTIVE DATE: October 1, 2008

## **BACKGROUND**

### ***Pension Protection Act of 2006 (PL 109-280)***

This act enacted provisions making it easier for employers to offer automatic enrollment in retirement plans. While automatic enrollment had been allowed under IRS regulations since 1998, many employers were reluctant to offer these plans because of two main concerns. First, it was unclear whether automatic enrollment violated state anti-garnishment laws that prohibit withholding an employee's wages without written consent. Second, employers feared being held liable for the investment decisions made on behalf of employees participating in automatic enrollment plans who did not provide investment direction. The Pension Protection Act enacted provisions to address these concerns.

### ***Automatic Contribution Arrangements***

To qualify as an "automatic contribution arrangement" under the Pension Protection Act, a defined contribution plan must contribute 3% of each employee's salary in the first year, increasing 1% each year up to a maximum of 10%. Employers must match 100% of the first 1% of employee contributions and 50% of the next 5% of pay for each employee. Employer matching contributions must be 100% vested after two years of service.

### ***ERISA Pre-emption***

The Pension Protection Act preempts any state law that restricts the use of automatic enrollment plans if participant notification and default investment rules are met. But, this preemption applies only to plans covered by the Employee Retirement Income Security Act of 1974 (ERISA). Non-ERISA plans, which include government and church plans, remain subject to state wage law restrictions.

### ***Fiduciary Liability***

Under the Pension Protection Act, employers are not held liable for financial losses when investing contributions under automatic enrollment plans on behalf of employees that do not provide investment direction. But, plans must comply with default investment and notification regulations. Employees must be notified annually of their right to opt out of the plan, how their contributions will be invested if they do not provide any direction, and their ability to choose to make contributions in a different amount. If an employee does not provide any investment direction, contributions must be invested in a “qualified default investment alternative” as prescribed in federal Department of Labor regulations.

**COMMITTEE ACTION**

Select Committee on Aging

Joint Favorable Change of Reference

Yea 11 Nay 0 (03/04/2008)

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/11/2008)